

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

TUESDAY, THE 4TH SEPTEMBER 2007 / 13TH BHADRA 1929

CRP.No. 964 of 2004()

AGAINST THE ORDER DATED 26/07/2004 IN EP.158/2002 IN
OS.352/2002 of MUNSIF'S COURT, MUVATTUPUZHA
.....

REVN. PETITIONERS: JUDGMENT DEBTORS 2 & 3/DEFENDANTS 2 AND 3:

1. C.M.PAULOSE, S/O. MATHAI,
CHERATHOTTATHIL, POTHANICADU KARA,
POTHANICADU VILLAGE.

2. PHILIP, S/O. PAULOSE, -DO- -DO-.

BY ADV. SRI.MATHEW SKARIA
SRI.JOY JOSEPH

RESPONDENT: DECREE HOLDER/PLAINTIFF:

YOHANNAN, S/O. VARKEY,
PADINJATTIL, POTHANICADU KARA, POTHANICADU VILLAGE

BY ADV. SRI.PEYUS A.KOTTAM

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD
ON 04/09/2007, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

ORDER ON I.A.NO.2384/04 IN C.R.P.964/04

DISMISSED

4.9.2007

SD/-PIUS C.KURIAKOSE, JUDGE

/TRUE COPY/

PIUS C. KURIAKOSE, J.

.....
C.R.P.No.964 OF 2004
.....

DATED THIS THE 4TH SEPTEMBER, 2007

ORDER

Judgment-debtors 2 and 3 against whom alone petition for execution was filed by the respondent-decree-holder are aggrieved by the order of the execution court by which it has been found that they have violated the decree and appointed a commissioner for supervising the restoration of the suit property as well as a kayyala thereon to their original position at the cost of the petitioners. They are also aggrieved by the direction of the execution court that they are liable to be detained in civil prison for a period of three months for violation of the decree.

2. Heard Sri.Mathew Skaria, learned counsel for the petitioners and Sri.Peeyus A.Kottam, learned counsel for the respondent.

3. Sri.Mathew Skaria would submit that the finding of the execution court that the petitioners are guilty of violation of the decree for injunction is without any basis. The property in question belonged to the 1st judgment-debtor and not to the petitioners. If at all anybody violated the injunction decree, it is the 1st judgment-debtor who did so and not the petitioners. The learned counsel submitted that the petitioners are not seriously opposed to the kayyala and the suit

property being restored to their original state. They are aggrieved by the direction that such restoration shall be at their cost. Counsel submitted that at any rate the direction that the petitioners be arrested and detained in civil prison for a period of three months was not justified.

4. The submission of Mr.Mathew Skaria were resisted by Mr.Peeyus A.Kottam, counsel for the respondent.

5. Having considered the rival submissions addressed at the Bar, I do not find much merit in the submission that it is the 1st judgment-debtor who is presently in America who should be found responsible for the alleged violation of the decree. The 1st judgment-debtor is admittedly the son of the 1st petitioner. Obviously, it is the 1st petitioner who is in charge of the decree-schedule property on behalf of the 1st judgment-debtor in his absence. It is the petitioners alone who could have violated the decree and not the 1st judgment-debtor who is away in America. The position is obvious that the decree has been violated and the status quo ante which obtained in respect of the suit property has been disturbed. I do not find any warrant for setting aside the first four directions issued by the learned Munsiff under the impugned order.

6. At the same time, I feel that since the fifth direction pertains to the personal liberty of the petitioners who are not the owners of the property, the said direction requires reconsideration. I set aside the fifth direction in the impugned order and direct the learned Munsiff to pass fresh orders. The learned Munsiff will be justified in quantifying and directing payment of any reasonable amount as compensation in lieu of arrest. Fresh orders as directed above shall be passed by the learned Munsiff at the earliest and at any rate within three months of receiving copy of this order.

The C.R.P. is disposed of as above. No costs.

(PIUS C.KURIAKOSE, JUDGE)

tgl

C.R.P.N0.964/04

C.R.P.N0.964/04